

**Debbie Beadle**

---

**From:** meggee@comcast.net  
**Sent:** Tuesday, March 5, 2013 2:36 PM  
**To:** Debbie Beadle  
**Cc:** David Gee; Megan gee  
**Subject:** Fwd: 3.5.13 Public Comment to Sammamish City Council re Fee in Lieu  
**Attachments:** SEA\_DOCS-#1093607-v2-fee in lieu code revisions.docx; SEA\_DOCS-#1093607-v1-fee in lieu code revisions.docx; SEA\_DOCS-#1093614-v1-Public Comment to Sammamish City Council re Fee in Lieu.pptx

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Debbie, here is another public comment power point presentation for tonights meeting. This will be presented by Megan Gee. Thanks.

EXHIBIT NO.

CC9.

#### **21A.50.140 Mitigation, maintenance, monitoring and contingency.**

\* \* \* \*

(3) Mitigation shall be in-kind and on-site where feasible and sufficient to maintain critical area and buffer functions, and where applicable to prevent risk from a hazard posed by a critical area, **except that mitigation shall be off-site when the following apply:**

(a) A qualified professional determines or an applicant otherwise demonstrates that it is not feasible to mitigate on the development proposal site; and

(b) A qualified professional determines or an applicant otherwise demonstrates that the off-site mitigation will achieve equivalent or greater hydrological, water quality and wetland or aquatic area habitat functions.

(5) When off-site mitigation is authorized, the City shall give priority to locations in the following order of preference:

(a) Within the same drainage subbasin;

(b) Within the city limits;

(c) Within the boundaries of a state and/or federally-approved fee-in-lieu mitigation program.

(6) Mitigation shall not be implemented until after the City of Sammamish approves the applicable critical areas study, mitigation plan and any required permits. Following City approval, mitigation shall be implemented in accordance with the provisions of the approved critical areas study and mitigation plan. (Ord. O2005-193 § 1; Ord. O99-29 § 1)

---

#### **21A.50.310 Wetlands – Mitigation requirements.**

When mitigation for wetland and/or wetland buffer impacts is required, mitigation shall meet the requirements listed in SMC 21A.50.145 in addition to the following supplementary requirements:

\* \* \* \* \*

(4) Mitigation Type and Location. Mitigation actions shall be in-kind and conducted within the same sub-basin and on the same site as the alteration, **except that mitigation shall be off-site when the following apply:**

(a) A qualified professional determines or an applicant otherwise demonstrates there are **no reasonable on-site opportunities for mitigation**, or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;

(b) A qualified professional determines or an applicant otherwise demonstrates **off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland**; and

(c) Off-site locations have been identified and evaluated in the following order of preference:

(i) State and/or federally-approved fee-in-lieu or mitigation bank program sites within the City limits in accordance with SMC 21A.50.315;

- (ii) State and/or federally-approved fee-in-lieu or mitigation bank program sites within the WRIA 8 in accordance with SMC 21A.50.315;
- (iii) Other state and/or federally-approved fee-in-lieu or mitigation bank program sites.

---

#### **21A.50.315 Wetlands – Alternative Mitigation**

\* \* \* \* \*

##### **(2) Fee-in-lieu Mitigation.**

(a) Fee-in-lieu mitigation shall be approved for use as compensation for approved impacts to wetlands, when:

- (i) Criteria in SMC 21A.50.310(4) are met;
- (ii) A state and/or federally-approved fee-in-lieu mitigation is available;
- (iii) A qualified professional determines or an applicant otherwise demonstrates that wetland fee-in-lieu mitigation provides appropriate compensation for the authorized impacts;
- (iv) The proposed use of fee-in-lieu mitigation is consistent with the terms and conditions of the fee-in-lieu mitigation program that is selected; and

(v) The compensatory mitigation agreement occurs in advance of authorized impacts.

(b) Available fee-in-lieu mitigation programs shall be identified and evaluated in the following order of preference:

- (i) A state and/or federally- approved fee-in-lieu program that utilizes receiving mitigation sites within the City of Sammamish.
- (ii) The King County Mitigation Reserves Program, or other state and/or federally-approved program that gives priority to sites within the same sub-basin and/or a pre-defined service area that includes the City of Sammamish;
- (iii) Other state and/or federally-approved fee-in-lieu mitigation program.

---

#### **21A.50.350 Streams – Mitigation requirements.**

When mitigation for stream or stream buffer impacts is required, mitigation shall meet the requirements listed in SMC 21A.50.145 in addition to the following supplementary requirements:

\* \* \* \* \*

(2) Mitigation Type and Location. Mitigation actions shall be in-kind and conducted within the same sub-basin and on the same site as the alteration, **except that mitigation shall be off-site when the following apply:**

- (a) A qualified professional determines or an applicant otherwise demonstrates there are no reasonable on-site opportunities for mitigation or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;

(b) A qualified professional determines or an applicant otherwise demonstrates off-site mitigation has a greater likelihood of providing equal or improved functions than the impacted stream; and

(c) Off-site locations have been identified and evaluated in the following order of preference:

(i) State and/or federally-approved fee-in-lieu or mitigation bank program sites located within the city limits in accordance with the provisions of this section;

(ii) State and/or federally-approved fee-in-lieu or mitigation bank program sites located within the WRIA 8 in accordance with the provisions of this section;

(iii) Other state and/or federally-approved fee-in-lieu or mitigation bank program sites.

(3) Fee-In-Lieu Stream Mitigation Program. Fee-in-lieu mitigation may be authorized for streams, subject to the avoidance sequence requirements and mitigation measures of this title, and the availability of a state and/or federally approved fee-in-lieu program, to be used in the following order of preference:

(a) A state and/or federally-approved program that utilizes receiving mitigation sites within the City of Sammamish.

(b) The King County Mitigation Reserves Program, or other state and/or federally-approved program that gives priority to sites within the same sub-basin and/or a pre-defined service area that includes the City of Sammamish;

(c) Other state and/or federally-approved fee-in-lieu program sites.

SEA\_DOCS:1093607.2

#### 21A.50.140 Mitigation, maintenance, monitoring and contingency.

\* \* \* \*

(3) Mitigation shall be in-kind and on-site where feasible and sufficient to maintain critical area and buffer functions, and where applicable to prevent risk from a hazard posed by a critical area, except that mitigation shall be off-site when the following apply:

(a) A qualified professional determines or an applicant otherwise demonstrates that it is not feasible to mitigate on the development proposal site; and

(b) A qualified professional determines or an applicant otherwise demonstrates that the off-site mitigation will achieve equivalent or greater hydrological, water quality and wetland or aquatic area habitat functions.

(5) When off-site mitigation is authorized, the City shall give priority to locations in the following order of preference:

(a) Within the same drainage subbasin;

(b) Within the city limits;

(c) Within the boundaries of a state and/or federally approved fee-in-lieu mitigation program.

(6) Mitigation shall not be implemented until after the City of Sammamish approves the applicable critical areas study, mitigation plan and any required permits. Following City approval, mitigation shall be implemented in accordance with the provisions of the approved critical areas study and mitigation plan. (Ord. 02005-193 § 1; Ord. 099-29 § 1)

Formatted: Space After: 16 pt, Don't add space between paragraphs of the same style

Deleted: ¶  
(4) The city may approve off-site mitigation if an applicant demonstrates that:

Deleted: I

Deleted: T

Deleted: city

Deleted: n

Formatted: Font: 12 pt, Not Highlight

#### 21A.50.310 Wetlands – Mitigation requirements.

When mitigation for wetland and/or wetland buffer impacts is required, mitigation shall meet the requirements listed in SMC 21A.50.145 in addition to the following supplementary requirements:

\* \* \* \* \*

(4) Mitigation Type and Location. Mitigation actions shall be in-kind and conducted within the same sub-basin and on the same site as the alteration, except that mitigation shall be off-site when the following apply:

(a) A qualified professional determines or an applicant otherwise demonstrates there are no reasonable on-site opportunities for mitigation, or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;

Deleted: There

(b) A qualified professional determines or an applicant otherwise demonstrates off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

Deleted: O

(c) Off-site locations have been identified and evaluated in the following order of preference:

(i) State and/or federally-approved fee-in-lieu or mitigation bank program sites within the City limits in accordance with SMC 21A.50.315;

Deleted: A

Deleted: city

- (ii) ~~State and/or federally-approved~~ fee-in-lieu or mitigation bank program sites within the WRIA 8 in accordance with SMC 21A.50.315;
- (iii) ~~Other state and/or federally approved~~ fee-in-lieu or mitigation bank program sites.

Deleted: A

#### 21A.50.315 Wetlands – Alternative Mitigation

\*\*\*\*\*

##### (2) Fee-in-lieu Mitigation.

(a) Fee-in-lieu mitigation ~~shall~~ be approved for use as compensation for approved impacts to wetlands, when:

Deleted: may

- (i) Criteria in SMC 21A.50.310(4) are met;
- (ii) ~~A state and/or federally-approved~~ fee-in-lieu mitigation ~~is available~~;
- (iii) ~~A qualified professional determines or an applicant otherwise demonstrates that~~ wetland fee-in-lieu mitigation provides appropriate compensation for the authorized impacts;
- (iv) The proposed use of fee-in-lieu mitigation is consistent with the terms and conditions of the fee-in-lieu mitigation program ~~that is selected~~; and

Deleted: The

Deleted: program is state certified and federally approved

Deleted: The department determines

Deleted: the

(v) The compensatory mitigation agreement occurs in advance of authorized impacts.

Formatted: Indent: Left: 0.72", First line: 0.34", Don't add space between paragraphs of the same style, Line spacing: single

(b) ~~Available~~ fee-in-lieu mitigation programs ~~shall~~ be identified and evaluated in the following order of preference:

Formatted: Don't add space between paragraphs of the same style, Line spacing: single

(i) ~~A state and/or federally-approved~~ fee-in-lieu program that utilizes receiving mitigation sites within the City of Sammamish.

Deleted: F

Deleted: may be authorized in the city based upon the following order of preference

Deleted: :

Formatted: Font: 12 pt

(ii) The King County Mitigation Reserves Program, or other ~~state and/or federally~~-approved program that gives priority to sites within the same sub-basin and/or a pre-defined service area that includes the City of Sammamish;

Deleted: city

Deleted: city

Deleted: city

Deleted: .

(iii) ~~Other state and/or federally-approved~~ fee-in-lieu mitigation program.

Formatted: Indent: Left: 1.33"

#### 21A.50.350 Streams – Mitigation requirements.

When mitigation for stream or stream buffer impacts is required, mitigation shall meet the requirements listed in SMC 21A.50.145 in addition to the following supplementary requirements:

\*\*\*\*\*

(2) Mitigation Type and Location. Mitigation actions shall be in-kind and conducted within the same sub-basin and on the same site as the alteration, except that mitigation shall be off-site when the following apply:

Formatted: Font: 12 pt, Bold

Formatted: Font: 12 pt, Bold

(a) ~~A qualified professional determines or an applicant otherwise demonstrates there are no reasonable on-site opportunities for mitigation or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate~~;

Deleted: T

(b) A qualified professional determines or an applicant otherwise demonstrates off-site mitigation has a greater likelihood of providing equal or improved functions than the impacted stream; and

Deleted: 0

(c) Off-site locations have been identified and evaluated in the following order of preference:

(i) State and/or federally-approved fee-in-lieu or mitigation bank program sites located within the city limits in accordance with the provisions of this section;

Deleted: Approved

(ii) State and/or federally-approved fee-in-lieu or mitigation bank program sites located within the WRIA 8 in accordance with the provisions of this section;

Deleted: .

(iii) Other state and/or federally-approved fee-in-lieu or mitigation bank program sites.

(3) Fee-In-Lieu Stream Mitigation Program. Fee-in-lieu mitigation may be authorized for streams, subject to the avoidance sequence requirements and mitigation measures of this title, and the availability of a state and/or federally approved fee-in-lieu program, to be used in the following order of preference:

Deleted: approval

Deleted: by the federal, state or city authority

(a) A state and/or federally-approved program that utilizes receiving mitigation sites within the City of Sammamish.

Deleted: A city

Deleted: city

(b) The King County Mitigation Reserves Program, or other state and/or federally-approved program that gives priority to sites within the same sub-basin and/or a pre-defined service area that includes the City of Sammamish;

Formatted: Indent: Left: 0.75", Don't add space between paragraphs of the same style, Line spacing: single

(c) Other state and/or federally-approved fee-in-lieu program sites.

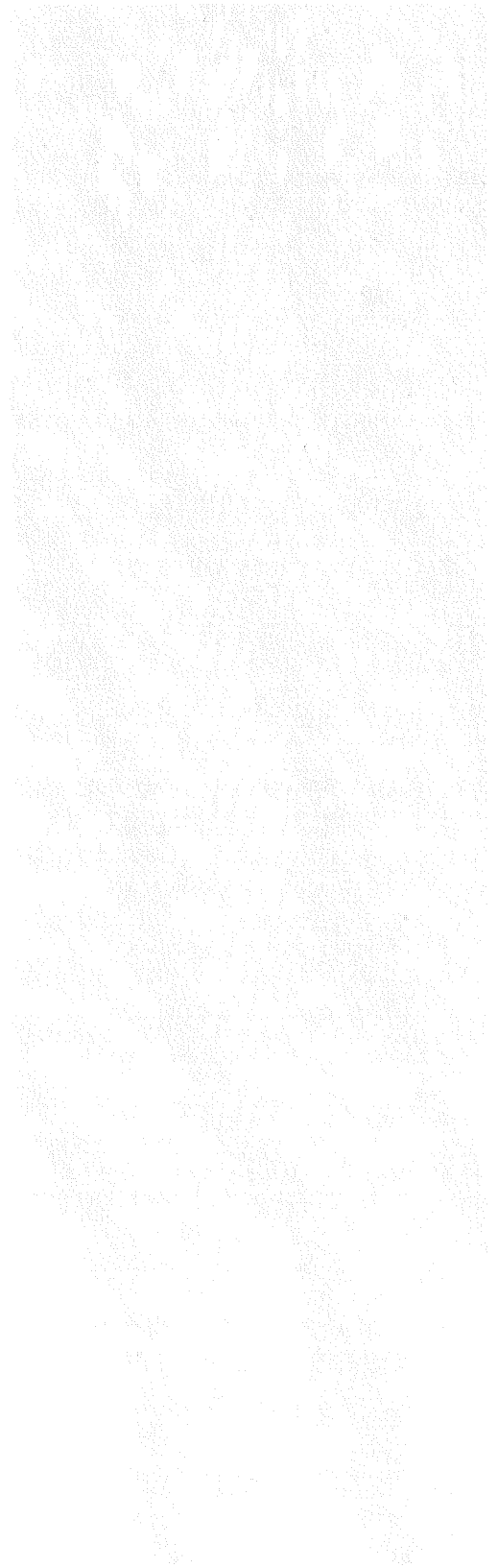
Deleted: city

Deleted: .

Formatted: Font: (Default) Calibri, 12 pt



SEA\_DOCS:1093607.1



# **City of Sammamish Environmental Critical Area Review 2012-2013**

**Public Comment: Clarification of Fee-in-Lieu Alternatives**

**Sammamish City Council Meeting**

**March 5, 2012**

David and Megan Gee  
22201 NE 28<sup>th</sup> Place  
Sammamish, WA 98074

# Best Available Science

## *Wetlands*

*Prepared for the City of Sammamish  
by AMEC Environment & Infrastructure, Inc.*

### *Best Available Science*

#### *Wetlands*

As a result of failure of many previous mitigation projects, Ecology and some Washington jurisdictions are encouraging the use of mitigation banks and in-lieu fee programs because these can offer greater assurance for mitigation success to both the applicant and the jurisdiction.

Page 5

As a result, where existing isolated wetlands occur, a review should be conducted to identify the functions that the wetland provides to determine how the isolated wetland should be managed for ecological function of the watershed as a whole. The NRCS suggested that, for isolated wetlands, mitigation should be encouraged off-site to improve the overall function of the watershed (NRCS, 2006), where fill is allowed and/or merited following mitigation sequencing as described previously.

Page 20

# Fee-in-Lieu Programs to be Approved by Federal + State Government



## Guidance on In-Lieu Fee Mitigation

## Pertinent Regulations

### Federal

The U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection published the *Federal Rule on Compensatory Mitigation: Compensatory Mitigation Aquatic Resources; Final Rule* (33 CFR Parts 325 and 332 and 40 CFR Part 230), dated April 10, 2008<sup>2</sup>. The federal rule defines requirements of compensatory mitigation for unavoidable impacts to waters of the U.S. and other aquatic resources resulting from authorized activities. The federal rule outlines the review and approval process and requirements for ILF programs. The Corps serves as chair of the process and invites Ecology to participate as co-chair<sup>3</sup> of the Interagency Review Team (IRT).

### State

While Ecology does not have a direct rule regarding ILF programs, we do have authority to require compensatory mitigation for unavoidable impacts to waters of the state. Ecology's authority rests with the state Water Pollution Control Act (Chapter 90.48 RCW) and associated water quality regulations (Chapter 173-201A WAC). Based on the anti-degradation policy (Chapter 173-201A-300 WAC), adequate mitigation is required to effectively offset unavoidable impacts to surface waters of the state of Washington. Per Section 401 of the federal Clean Water Act, Ecology must certify that projects comply with state water quality standards before the Corps' Section 404 permit can be authorized. For projects proposing to use ILF mitigation, Ecology follows the federal ILF review and approval process. It is under this process that Ecology serves as co-chair of the IRT.

# Proposed Revisions to Draft Code re Off-site Mitigation

Off-site mitigation should be required if applicant/qualified professional demonstrates:  
-on-site is not feasible  
-off-site is best for environment

## 21A.50.140 Mitigation, maintenance, monitoring and contingency.

\* \* \*

(3) Mitigation shall be in-kind and on-site where feasible and sufficient to maintain critical area and buffer functions, and where applicable to prevent risk from a hazard posed by a critical area, except that mitigation shall be off-site when the following

apply:

~~(4) The city may approve off-site mitigation if an applicant demonstrates that:~~

(a) A qualified professional determines or an applicant otherwise demonstrates that it is not feasible to mitigate on the development proposal site; and

(b) A qualified professional determines or an applicant otherwise demonstrates that the off-site mitigation will achieve equivalent or greater hydrological, water quality and wetland or aquatic area habitat functions.

(5) When off-site mitigation is authorized, the city ~~City~~ shall give priority to locations in the following order of preference:

(a) Within the same drainage subbasin;

(b) Within the city limits;

(c) Within the boundaries of a state and/or federally ~~approved~~ fee-in-lieu mitigation program.

(6) Mitigation shall not be implemented until after the City of Sammamish approves the applicable critical areas study, mitigation plan and any required permits. Following City approval, mitigation shall be implemented in accordance with the provisions of the approved critical areas study and mitigation plan. (Ord. 02005-193 § 1; Ord. 099-29 § 1)

Edit to clarify that Federal/State Approve Fee-in-Lieu Programs

# Similar Proposed Revisions to Draft Fee-in-Lieu Sections for Wetlands and Streams

## 21A.50.315 Wetlands – Alternative Mitigation

\*\*\*\*\*

### (2) Fee-in-lieu Mitigation.

- (a) Fee-in-lieu mitigation ~~may~~ shall be approved for use as compensation for approved impacts to wetlands, when:
  - (i) Criteria in SMC 21A.50.310(4) are met;
  - (ii) A state and/or federally approved ~~the~~ fee-in-lieu mitigation ~~program~~ is state-certified and federally approved is available;
  - (iii) A qualified professional determines or an applicant otherwise demonstrates ~~the department determines~~ that ~~the~~ wetland fee-in-lieu mitigation provides appropriate compensation for the authorized impacts;
  - (iv) The proposed use of fee-in-lieu mitigation is consistent with the terms and conditions of the fee-in-lieu mitigation program ~~that is~~ selected; and
  - (v) The compensatory mitigation agreement occurs in advance of authorized impacts.
- (b) Available ~~fee-in-lieu mitigation programs may be authorized in the city~~ based upon the following ~~order of preference~~ shall be identified and evaluated in the following order of preference:
  - (i) A state and/or federally ~~city~~ approved fee-in-lieu program that utilizes receiving mitigation sites within the ~~city~~ City of Sammamish.
  - (ii) The King County Mitigation Reserves Program, or other ~~state~~ and/or federally approved program that gives priority to sites within the same sub-basin and/or a pre-defined service area that includes the ~~city~~ City of Sammamish;
  - (iii) Other state and/or federally approved fee-in-lieu mitigation program.

Fee-in-lieu mitigation should be required if applicant/qualified professional demonstrates:  
-on-site is not feasible  
-off-site is best for environment

## 21A.50.350 Streams – Mitigation requirements.

When mitigation for stream or stream buffer impacts is required, mitigation shall meet the requirements listed in SMC 21A.50.145 in addition to the following supplementary requirements:

\*\*\*\*\*

- (2) Mitigation Type and Location. Mitigation actions shall be in-kind and conducted within the same sub-basin and on the same site as the alteration, except that mitigation shall be off-site when the following apply:
  - (a) A qualified professional determines or an applicant otherwise demonstrates ~~there are no reasonable on-site opportunities for mitigation or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;~~
  - (b) A qualified professional determines or an applicant otherwise demonstrates ~~off-site mitigation has a greater likelihood of providing equal or improved functions than the impacted stream; and~~
  - (c) Off-site locations have been identified and evaluated in the following order of preference:
    - (i) State and/or federally approved ~~approved~~ fee-in-lieu or mitigation bank program sites located within the city limits in accordance with the provisions of this section;
    - (ii) State and/or federally approved fee-in-lieu or mitigation bank program sites located within the WRIA 8 in accordance with the provisions of this section;
    - (iii) Other state and/or federally approved fee-in-lieu or mitigation bank program sites.
- (3) Fee-in-lieu Stream Mitigation Program. Fee-in-lieu mitigation may be authorized for streams, subject to the avoidance sequence requirements and mitigation measures of this title, and the ~~availability~~ availability of a state and/or federally approved fee-in-lieu program ~~by the federal state or city authority~~ to be used in the following order of preference:
  - (a) A ~~city~~ state and/or federally approved program that utilizes receiving mitigation sites within the ~~city~~ City of Sammamish.
  - (b) The King County Mitigation Reserves Program, or other state and/or federally approved program that gives priority to sites within the same sub-basin and/or a pre-defined service area that includes the ~~city~~ City of Sammamish;
  - (c) Other state and/or federally approved fee-in-lieu program sites.

## 21A.50.310 Wetlands – Mitigation requirements.

When mitigation for wetland and/or wetland buffer impacts is required, mitigation shall meet the requirements listed in SMC 21A.50.145 in addition to the following supplementary requirements:

\*\*\*\*\*

- (4) Mitigation Type and Location. Mitigation actions shall be in-kind and conducted within the same sub-basin and on the same site as the alteration, except that mitigation shall be off-site when the following apply:
  - (a) A qualified professional determines or an applicant otherwise demonstrates ~~there are no reasonable on-site opportunities for mitigation, or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;~~
  - (b) A qualified professional determines or an applicant otherwise demonstrates ~~off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and~~
  - (c) Off-site locations have been identified and evaluated in the following order of preference:
    - (i) State and/or federally approved fee-in-lieu or mitigation bank program sites within the ~~city~~ City limits in accordance with SMC 21A.50.315;
    - (ii) State and/or federally approved fee-in-lieu or mitigation bank program sites within the WRIA 8 in accordance with SMC 21A.50.315;
    - (iii) Other state and/or federally approved fee-in-lieu or mitigation bank program sites.

• Edits to clarify that Fee-in-Lieu Programs are Federal/State Approved

• Also to make clear that Fee-in-Lieu is an option even if Sammamish or WRIA site (although preferred) is not (yet) available

THANK YOU